



06-CV-05078-ORD

FILED	LODGED
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AUG 30 2007	
CLERK U.S. DISTRICT COURT	
WESTERN DISTRICT OF WASHINGTON AT TACOMA	TACOMA
BY	DEPUTY

Hon. Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

EMMA MANNING,

Plaintiff,

vs.

TACOMA PUBLIC SCHOOLS, JAMES SHOEMAKE, SUPERINTENDENT; SAM BELL, EXECUTIVE DIRECTOR OF BUILDINGS & GROUNDS; KEN PRICE, DIRECTOR; MARGARET OHLSON, SUPERVISOR; RICHARD WATSON, SUPERVISOR; SUSAN LARSON, MAINTENANCE CLERK; AND ANY UNKNOWN PARTIES,

Defendants.

No. C06-5078RBL

Regarding
~~(PROPOSED) ORDER GRANTING~~
DEFENDANTS' MOTIONS IN LIMINE

THIS MATTER having come on regularly before the undersigned judge of the above-entitled Court upon Defendants Motions in Limine, and the Court having reviewed the documents filed in support of the motion, including:

1. Defendants' Motions in Limine;
2. Declaration of Patricia K. Buchanan in Support of Defendants' Motions in Limine, with attached exhibits;

(PROPOSED) ORDER GRANTING DEFENDANTS'
MOTIONS IN LIMINE - 1

PATTERSON BUCHANAN
FOBES LEITCH KALZER & WAECHTER

Two Union Square - 601 Union Street, Suite 4200
Seattle - WA - 98101 Tel. 206.652.3500 - Fax 206.652.3501

- 1 3. _____
- 2 4. _____
- 3 5. _____
- 4

5 The Court, having also heard the arguments of counsel for the various parties, hereby

6 ORDERS, ADJUDGES, AND DECREES that defendants' motions in limine are hereby

7 granted, denied, and reserved as follows:

- 8 A. All non-party witnesses should be excluded from the courtroom during the
- 9 course of trial
- 10 ☒ Granted ☐ Denied ☐ Reserved
- 11 B. Parties should be required to give 24-hour notice of witnesses, deposition,
- 12 and exhibits to be called or used at trial.
- 13 ☒ Granted ☐ Denied ☐ Reserved
- 14 C. Any argument the plaintiff intends to make to the Court on damages should
- 15 be made in his closing argument and not introduced in rebuttal.
- 16 ☒ Granted ☐ Denied ☐ Reserved
- 17 D. Medical records should be excluded as evidence, or redacted, to the extent
- 18 they contain hearsay or expressions of opinion, conjecture, or speculation if
- 19 they are merely cumulative of the testimony of plaintiff or her witnesses.
- 20 ☐ Granted ☐ Denied ☒ Reserved
- 21 E. Any mention of defendants' financial status or the relative impecuniosity of
- 22 plaintiff should be excluded.
- 23 ☒ Granted ☐ Denied ☐ Reserved
- 24 F. There should be no display of exhibits until admitted into evidence, or until
- 25 permission has been obtained from the Court.
- ☒ Granted ☐ Denied ☐ Reserved
- G. Plaintiff should not be able to use past alleged bad acts as proof of
- conformity therewith.
- ☐ Granted ☐ Denied ☒ Reserved

1 **H. There should be no mention that these motions, or others, have been filed**
2 **and argued before the Court.**

3 ☒ Granted ☐ Denied ☐ Reserved

4 **I. There should be no reference to the discovery process or discovery disputes.**

5 ☐ Granted ☐ Denied ☒ Reserved

6 **J. This Court should exclude any references to Ms. Manning's alleged**
7 **litigation-induced stress.**

8 ☐ Granted ☐ Denied ☒ Reserved

9 **K. Specific testimony that defendants seek to exclude as provided in Exhibit I**
10 **to the Declaration of Patricia K. Buchanan in Support of Defendants'**
11 **Motions in Limine:**

12 **I. EMMA MANNING VOL. 1**

13 **A. 32:17-19 (Expert opinion testimony by lay witness, Foundation, Speculation)**

14 ☐ Granted ☐ Denied ☒ Reserved

15 **B. 35:18-36:3 (Lacks personal knowledge, Foundation, Speculation)**

16 ☐ Granted ☐ Denied ☒ Reserved

17 **C. 48:20-49:13 (Hearsay, Speculation, Lacks personal knowledge, Foundation)**

18 ☐ Granted ☐ Denied ☒ Reserved

19 **D. 50:13-51:9 (Hearsay, Foundation, Speculation, Lacks personal knowledge)**

20 ☐ Granted ☐ Denied ☒ Reserved

21 **E. 55:3-5 (Hearsay, Speculation, Lacks personal knowledge)**

22 ☐ Granted ☐ Denied ☒ Reserved

23 **F. 55:6-20 (Speculation, Lacks personal knowledge, Foundation)**

24 ☐ Granted ☐ Denied ☒ Reserved

1 G. 81:19-83:2 (Speculation, Lacks personal knowledge, Foundation)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 H. 88:4-14 (Speculation, Lacks personal knowledge, Foundation)

5 ☐ Granted ☐ Denied ☒ Reserved

6 I. 111:9-19 (Improper expert opinion from lay witness, Speculation, Lacks personal
7 knowledge, Foundation)

8 ☐ Granted ☐ Denied ☒ Reserved

9 J. 112:16-114:18 (Foundation, Lacks personal knowledge, Speculation, Hearsay)**Error!**
10 **Bookmark not defined.**

11 ☐ Granted ☐ Denied ☒ Reserved

12 K. 117:14-24 (Improper expert opinion from lay witness, Speculation, Lacks Personal
13 Knowledge, Foundation)

14 ☐ Granted ☐ Denied ☒ Reserved

15 L. 129:4-8 (Hearsay, Speculation, lacks personal knowledge)

16 ☐ Granted ☐ Denied ☒ Reserved

17 M. 136:5-16 (Speculation, Lacks personal knowledge, foundation)

18 ☐ Granted ☐ Denied ☒ Reserved

19 N. 145:12-146:22 (Speculation, Lacks personal knowledge)

20 ☐ Granted ☐ Denied ☒ Reserved

21 O. 154:19-24 (Speculation, Lacks personal knowledge, Foundation)

22 ☐ Granted ☐ Denied ☒ Reserved

1 **II. EMMA MANNING VOL. II**

2 A. 19:22-20:13 (Improper expert opinion from lay witness, Speculation, Hearsay)

3 ☐ Granted ☐ Denied ☒ Reserved

4 B. 26:1-11 (hearsay)

5 ☐ Granted ☐ Denied ☒ Reserved

6 C. 60:8-17 (Hearsay)

7 ☐ Granted ☐ Denied ☒ Reserved

8 D. 70:12-19 (Hearsay)

9 ☐ Granted ☐ Denied ☒ Reserved

10 E. 76:2-10 (Lacks personal knowledge, Speculation, Foundation, Relevance, Prejudice,
11 Fed. R. Evid. 403)

12 ☐ Granted ☐ Denied ☒ Reserved

13 F. 77:6-78:9 (Lacks personal knowledge, Speculation, Foundation, Relevance, Prejudice,
14 Fed. R. Evid. 403)

15 ☐ Granted ☐ Denied ☒ Reserved

16 G. 85:15-86:8 (Hearsay, Speculation, Lacks personal knowledge, Improper expert opinion
17 from lay witness)

18 ☐ Granted ☐ Denied ☒ Reserved

19 H. 94:2-7 (Hearsay, Lacks personal knowledge, Speculation)

20 ☐ Granted ☐ Denied ☒ Reserved

1 I. 109:6-13 (Hearsay)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 J. 129:24-130:9 (Hearsay, Lacks personal knowledge, Speculation)

5 ☐ Granted ☐ Denied ☒ Reserved

6 K. 158:5-14 (Hearsay)

7 ☐ Granted ☐ Denied ☒ Reserved

8
9 **III. RICHARD M. LONG**

10 A. 5:23-6:12 (Relevance, Hearsay)

11 ☐ Granted ☐ Denied ☒ Reserved

12 B. 6:16-18 (Relevance)

13 ☐ Granted ☐ Denied ☒ Reserved

14 C. 6:24-7:2 (Relevance)

15 ☐ Granted ☐ Denied ☒ Reserved

16 D. 7:11-16 (Non-responsive, Relevance)

17 ☐ Granted ☐ Denied ☒ Reserved

18
19 E. 7:23-8:1 (Hearsay)

20 ☐ Granted ☐ Denied ☒ Reserved

21 F. 9:12-13 (Non-responsive, Hearsay)

22 ☐ Granted ☐ Denied ☒ Reserved

1 G. 11:21-12:3 (Foundation, Non-responsive)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 H. 13:16-20 (Foundation)

5 ☐ Granted ☐ Denied ☒ Reserved

6 I. 14:4-7 (Hearsay)

7 ☐ Granted ☐ Denied ☒ Reserved

8
9 J. 14:14-17 (Foundation, Hearsay)

10 ☐ Granted ☐ Denied ☒ Reserved

11 K. 16:21-24 (Non-responsive, Relevance)

12 ☐ Granted ☐ Denied ☒ Reserved

13
14 L. 18:9-17 (Relevance)

15 ☐ Granted ☐ Denied ☒ Reserved

16 M. 21:4-7 (Hearsay)

17 ☐ Granted ☐ Denied ☒ Reserved

18
19 N. 23:19-24:5 (Hearsay, Foundation)

20 ☐ Granted ☐ Denied ☒ Reserved

21 O. 24:19-25:7 (Foundation, Hearsay)

22 ☐ Granted ☐ Denied ☒ Reserved

1 P. 25:17-26:1 (Foundation, Hearsay)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 Q. 27:1-12 (Foundation)

5 ☐ Granted ☐ Denied ☒ Reserved

6 R. 27:24-28:14 (Relevance, Foundation)

7 ☐ Granted ☐ Denied ☒ Reserved

8
9 S. 28:13-29:19 (Relevance, Non-responsive)

10 ☐ Granted ☐ Denied ☒ Reserved

11 T. 31:14-16 (Hearsay, in-part)

12 ☐ Granted ☐ Denied ☒ Reserved

13
14 U. 32:3-10 (Foundation, Hearsay)

15 ☐ Granted ☐ Denied ☒ Reserved

16 V. 32:16-19 (Hearsay)

17 ☐ Granted ☐ Denied ☒ Reserved

18
19 W. 32:22-24 (Hearsay)

20 ☐ Granted ☐ Denied ☒ Reserved

21
22 X. 33:9-20 (Hearsay)

23 ☐ Granted ☐ Denied ☒ Reserved

1 Y. 34:24-35:16 (Hearsay)
2 ☐ Granted ☐ Denied ☒ Reserved
3
4 Z. 36:20-21 (Hearsay)
5 ☐ Granted ☐ Denied ☒ Reserved
6
7 AA.37:6-8 (Non-responsive)
8 ☐ Granted ☐ Denied ☒ Reserved
9
10 BB.39:20-23 (Foundation)
11 ☐ Granted ☐ Denied ☒ Reserved
12
13 CC.40:21-41:2 (Foundation)
14 ☐ Granted ☐ Denied ☒ Reserved
15
16 DD.43:15-16 (Hearsay)
17 ☐ Granted ☐ Denied ☒ Reserved
18
19 EE.47:13-14 (Hearsay, Foundation)
20 ☐ Granted ☐ Denied ☒ Reserved
21
22 FF.48:18-49:15 (Hearsay, Foundation, Relevance)
23 ☐ Granted ☐ Denied ☒ Reserved
24
25 GG.50:4-11 (Foundation, Hearsay)
 ☐ Granted ☐ Denied ☒ Reserved

1 HH.51:9-14 (Foundation)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 II. 52:15-19 (Non-responsive)

5 ☐ Granted ☐ Denied ☒ Reserved

6 JJ. 54:3-4 (Foundation, Hearsay)

7 ☐ Granted ☐ Denied ☒ Reserved

8
9 KK.54:13-16 (Foundation, Hearsay)

10 ☐ Granted ☐ Denied ☒ Reserved

11 LL. 56:20-23 (Foundation)

12 ☐ Granted ☐ Denied ☒ Reserved

13
14 MM. 57:3-10 (Foundation)

15 ☐ Granted ☐ Denied ☒ Reserved

16 NN.57:20-58:11 (Hearsay)

17 ☐ Granted ☐ Denied ☒ Reserved

18
19 OO.58:14-16 (Foundation)

20 ☐ Granted ☐ Denied ☒ Reserved

21 PP. 59:22-60:2 (Foundation, Hearsay)

22 ☐ Granted ☐ Denied ☒ Reserved

1 QQ.60:7-12 (Speculation, Foundation)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 RR. 62:1-2 (Hearsay)

5 ☐ Granted ☐ Denied ☒ Reserved

6 **IV. KEN PRICE**

7 A. 8:4-16 (Foundation)

8 ☐ Granted ☐ Denied ☒ Reserved

9
10 B. 10:9-11:4 (Foundation, Speculation)

11 ☐ Granted ☐ Denied ☒ Reserved

12 C. 19:3-10 (Foundation)

13 ☐ Granted ☐ Denied ☒ Reserved

14
15 D. 21:2-22:24 (Foundation)

16 ☐ Granted ☐ Denied ☒ Reserved

17 E. 24:6-25:20 (Foundation)

18 ☐ Granted ☐ Denied ☒ Reserved

19
20 F. 29:13-19 (Hearsay)

21 ☐ Granted ☐ Denied ☒ Reserved

22
23 G. 30:18-31:9 (Foundation)

24 ☐ Granted ☐ Denied ☒ Reserved

1 H. 35:3-10 (Foundation)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 I. 38:23-39:1 (Foundation)

5 ☐ Granted ☐ Denied ☒ Reserved

6 J. 42:16-24 (Foundation, Legal Speculation)

7 ☐ Granted ☐ Denied ☒ Reserved

8
9 K. 44:10-18 (Foundation)

10 ☐ Granted ☐ Denied ☒ Reserved

11 **V. DEBBRA A. LONG**

12 ☐ Granted ☐ Denied ☒ Reserved

13
14 A. 6:19-22 (Foundation)

15 ☐ Granted ☐ Denied ☒ Reserved

16 B. 7:4-9 (Foundation)

17 ☐ Granted ☐ Denied ☒ Reserved

18
19 C. 11:3-6 (Hearsay)

20 ☐ Granted ☐ Denied ☒ Reserved

21
22 D. 13:19-23 (Hearsay, Lacks personal knowledge)

23 ☐ Granted ☐ Denied ☒ Reserved

1 E. 14:13-20 (Foundation)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 F. 16:15-23 (Foundation)

5 ☐ Granted ☐ Denied ☒ Reserved

6 G. 17:9-24 (Foundation)

7 ☐ Granted ☐ Denied ☒ Reserved

8
9 H. 18:21-19:12 (Hearsay)

10 ☐ Granted ☐ Denied ☒ Reserved

11 I. 21:13-20 (Hearsay)

12 ☐ Granted ☐ Denied ☒ Reserved

13
14 J. 22:25-23:5 (Relevance)

15 ☐ Granted ☐ Denied ☒ Reserved

16 K. 24:25-25:1 (Foundation)

17 ☐ Granted ☐ Denied ☒ Reserved

18
19 L. 28:11-18 (Hearsay)

20 ☐ Granted ☐ Denied ☒ Reserved

21
22 M. 34:18-22 (Relevance, Hearsay)

23 ☐ Granted ☐ Denied ☒ Reserved

1 N. 38:15-17 (Foundation)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 O. 44:15-45:2 (Foundation)

5 ☐ Granted ☐ Denied ☒ Reserved

6 P. 45:13-20 (Hearsay)

7 ☐ Granted ☐ Denied ☒ Reserved

8
9 Q. 46:4-7 (Relevance)

10 ☐ Granted ☐ Denied ☒ Reserved

11 R. 46:15-19 (Foundation)

12 ☐ Granted ☐ Denied ☒ Reserved

13
14 S. 46:25-47:3 (Foundation)

15 ☐ Granted ☐ Denied ☒ Reserved

16 T. 47:17-48:5 (Foundation, Hearsay)

17 ☐ Granted ☐ Denied ☒ Reserved

18
19 U. 48:15-19 (Foundation)

20 ☐ Granted ☐ Denied ☒ Reserved

21
22 V. 49:5-17 (Calls for a legal conclusion)

23 ☐ Granted ☐ Denied ☒ Reserved

1 W. 50:9-17 (Hearsay)

2 ☐ Granted ☐ Denied ☒ Reserved

3
4 **VI. MARGARET OHLSON**

5 A. 13:3-18 (Foundation)

6 ☐ Granted ☐ Denied ☒ Reserved

7 B. 76:4-8 (Relevance)

8 ☐ Granted ☐ Denied ☒ Reserved

9
10 C. 81:18-84-5 (Incomplete hypothetical, Foundation)

11 ☐ Granted ☐ Denied ☒ Reserved

12 **VII. DIANE M. SCHMIDTKE**

13 A. 79:1-10 (Foundation, Improper hypothetical, Assumes facts not in evidence)

14 ☐ Granted ☐ Denied ☒ Reserved

15 B. 73:11-23 (Foundation, Improper hypothetical, Assumes facts not in evidence)

16 ☐ Granted ☐ Denied ☒ Reserved

17
18 C. 80:13-15 (Foundation)

19 ☐ Granted ☐ Denied ☒ Reserved

20
21 D. 81:3-14 (Argumentative, Foundation, Assumes facts not in evidence, Speculation, Lacks
personal knowledge)

22 ☐ Granted ☐ Denied ☒ Reserved

23
24 E. 81:15-19 (Speculation, Argumentative, Lacks personal knowledge, Foundation)

25 ☐ Granted ☐ Denied ☒ Reserved

1
2 F. 84:6-85:10 (Relevance, Speculation, Lacks personal knowledge, Foundation)

3 ☐ Granted ☐ Denied ☒ Reserved

4
5 G. 86:14-87:1 (Relevance, Speculation, Lacks personal knowledge, foundation)

6 ☐ Granted ☐ Denied ☒ Reserved

7
8 H. 87:9-88:2 (Relevance, Speculation, Lacks personal knowledge, Foundation)

9 ☐ Granted ☐ Denied ☒ Reserved

10
11 I. 88:3-89:5 (Relevance, Speculation, Lacks personal knowledge, Foundation)

12 ☐ Granted ☐ Denied ☒ Reserved

13
14 J. 89:6-89:17 (Relevance, Assumes facts not in evidence, Speculation, Lacks personal
knowledge, Foundation)

15 ☐ Granted ☐ Denied ☒ Reserved

16
17 K. 89:18-90:17 (Relevance, Assumes facts not in evidence, Speculation, Lacks personal
knowledge, Foundation)

18 ☐ Granted ☐ Denied ☒ Reserved

19
20 L. 91:16-92:2 (Relevance, Improper hypothetical, Foundation)

21 ☐ Granted ☐ Denied ☒ Reserved

22
23 M. 93:15-94:8 (Speculation, Foundation, Lacks personal knowledge, Relevance)

24 ☐ Granted ☐ Denied ☒ Reserved

25
N. 98:3-7 (Relevance)

☐ Granted ☐ Denied ☒ Reserved

VIII. RICHARD WATSON

A. 19:8-19 (Foundation)

☐ Granted ☐ Denied ☒ Reserved

B. 23:14-24:2 (Foundation)

☐ Granted ☐ Denied ☒ Reserved

C. 28:5-25 (Foundation)

☐ Granted ☐ Denied ☒ Reserved

D. 38:15-23 (Calls for a legal conclusion)

☐ Granted ☐ Denied ☒ Reserved

E. 51:14-20 (Foundation)

☐ Granted ☐ Denied ☒ Reserved

F. 52:11-17 (Foundation, Hearsay)

☐ Granted ☐ Denied ☒ Reserved

G. 53:5-9 (Foundation)

☐ Granted ☐ Denied ☒ Reserved

IX. LaDONNA L. ALSTON

A. 15:14-16:19 (Hearsay, Lack of personal knowledge, Speculation, Foundation)

☐ Granted ☐ Denied ☒ Reserved

B. 18:8 – 20:2 (Hearsay, Lack of personal knowledge, Speculation, Foundation)

☐ Granted ☐ Denied ☒ Reserved

(PROPOSED) ORDER GRANTING DEFENDANTS'
MOTIONS IN LIMINE - 17

**PATTERSON BUCHANAN
FOBES LEITCH KALZER & WAECHTER**

Two Union Square – 601 Union Street, Suite 4200
Seattle - WA - 98101 Tel. 206.652.3500 • Fax 206.652.3501

C. 20:22-22:20 (Hearsay, Lacks personal knowledge, Speculation, Foundation)

☐ Granted ☐ Denied ☒ Reserved

D. 23:18-24:5 (Hearsay, Lacks personal knowledge, Speculation, Foundation)

☐ Granted ☐ Denied ☒ Reserved

E. 35:3-36:8 (Hearsay, Lacks personal knowledge, Speculation, Foundation, Relevance)

☐ Granted ☐ Denied ☒ Reserved

X. SUSAN LARSON

A. 10:15-11:1 (Foundation)

☐ Granted ☐ Denied ☒ Reserved

B. 25:22-26:5 (Foundation, Relevance, Speculation)

☐ Granted ☐ Denied ☒ Reserved

C. 34:24-35:14 (Foundation)

☐ Granted ☐ Denied ☒ Reserved

D. 37:19-38:3 (Foundation)

☐ Granted ☐ Denied ☒ Reserved

XI. ANDREW HWANG, M.D.

A. 18:23-19:9 (Relevance)

☐ Granted ☐ Denied ☒ Reserved

B. 21:23-22:20 (Relevance)

☐ Granted ☐ Denied ☒ Reserved

(PROPOSED) ORDER GRANTING DEFENDANTS'
MOTIONS IN LIMINE - 18

**PATTERSON BUCHANAN
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Two Union Square - 601 Union Street, Suite 4200
Seattle - WA - 98101 Tel. 206.652.3500 - Fax 206.652.3501

1
2 C. 27:9-16 (Relevance)

3 ☐ Granted ☐ Denied ☒ Reserved

4
5 D. 38:20-41:4 (Relevance)

6 ☐ Granted ☐ Denied ☒ Reserved

7 E. 41:11-15 (Relevance)

8 ☐ Granted ☐ Denied ☒ Reserved

9
10 F. 46:19-49:5 (Relevance)

11 ☐ Granted ☐ Denied ☒ Reserved

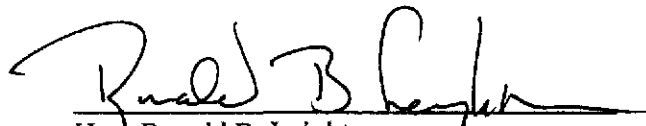
12
13 L. The Court should exclude any witnesses who were not disclosed by Ms.
14 Manning, or who were improperly disclosed by Ms. Manning in her Fed. R.
Civ. P. 26(a)(1) initial disclosures.

15 ☐ Granted ☐ Denied ☒ Reserved

16 M. The Court should exclude the "right to sue" letters issued to Ms. Manning
17 by the United States Equal Employment Opportunity Commission.

18 ☐ Granted ☐ Denied ☒ Reserved

19
20 Dated this 27th day of August, 2007.

21
22 
23 Hon. Ronald B. Leighton

1
2
3 Presented by:

4 PATTERSON BUCHANAN FOBES
5 LEITCH KALZER & WAECHTER, P.S.
6

7 By: /s/

8 Patricia K. Buchanan, WSBA No. 19892
9 Sean D. Jackson, WSBA No. 33615
10 Patterson Buchanan Fobes Leitch
11 Kalzer & Waechter, P.S.
12 601 Union Street, Suite 4200
Seattle, WA 98101
Telephone: (206) 652-3500
Fax: (206) 652-3501
Email: pkb@pattersonbuchanan.com
Of Attorneys for Defendants

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(PROPOSED) ORDER GRANTING DEFENDANTS'
MOTIONS IN LIMINE - 20

**PATTERSON BUCHANAN
FOBES LEITCH KALZER & WAECHTER**

Two Union Square - 601 Union Street, Suite 4200
Seattle - WA - 98101 Tel. 206.652.3500 - Fax 206.652.3501

CERTIFICATE OF SERVICE

I, Sean D. Jackson, do declare that on August 20, 2007, I caused to be delivered via CM/ECF, this document to the following attorney of record:

D. Michael Shipley
14009 - 42nd Ave. East
Tacoma, WA 98446
Shipleylaw@aol.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

/s/
Sean D. Jackson